

The Office accepted that on August 19, 1992 appellant, then a 42-year-old mechanical engineer, sustained a lumbar sprain in the performance of duty. Lumbar x-rays obtained that day

showed a lumbosacral strain without vertebral fracture or misalignment. Appellant returned to full duty.¹

On January 10, 2006 appellant claimed a recurrence of disability commencing November 2, 2005.² He asserted that, while seated at his desk, he experienced the spontaneous onset of severe lumbar pain. Appellant stopped work on November 30, 2005. He submitted medical evidence.

Dr. Nihad Owaid, an attending Board-certified physiatrist, opined in a December 1, 2005 report that the August 19, 1992 injury caused a herniated nucleus pulposus at L5-S1 and a possible T11-12 compression fracture. On examination, he found limited lumbar motion, a diminished left ankle reflex, weakness in extension of the left great toe and decreased pain sensation in the left L5 dermatome. Dr. Owaid stated that electromyography (EMG) and nerve conduction velocity (NCV) studies showed left-sided L5-S1 radiculopathy. He opined that appellant sustained a recurrence of the August 19, 1992 injury. Dr. Owaid found appellant totally disabled for work through March 7, 2006.

In a February 22, 2006 letter, the Office advised appellant of the additional factual and medical evidence needed to establish his claim. Appellant was afforded 30 days to submit additional evidence.

In a March 2, 2006 form report, Dr. Owaid stated that a December 9, 2005 magnetic resonance imaging (MRI) scan showed a herniated L5-S1 disc. He opined that appellant sustained a recurrence of the herniated L5-S1 disc. Dr. Owaid checked a box “yes” indicating his support for causal relationship, adding that the recurrence of disability was due to prolonged sitting at work.

Appellant submitted a March 3, 2006 statement noting a flare-up of lumbar pain in October 1998, treated by a chiropractor. He returned to full duty.

By decision dated April 5, 2006, the Office denied the claim on the grounds that causal relationship was not established. It found that appellant submitted insufficient medical evidence explaining how and why the accepted August 19, 1992 lumbar sprain would cause the claimed recurrence of disability on and after November 2, 2005. The Office further found that Dr. Owaid attributed appellant’s symptoms to a herniated lumbar disc, which was not an accepted injury.

In a May 1, 2006 letter postmarked May 3, 2006, appellant requested a hearing, held on August 16, 2006. At the hearing, he asserted that the August 19, 1992 injury caused a herniated lumbar disc with radiculopathy. The hearing representative discussed the additional evidence

¹ The August 19, 1992 injury was accepted under File No. 02-209200. On January 14, 2008 the Office accepted that appellant sustained a 75 percent bilateral hearing loss in an occupational blast accident. It processed the hearing loss claim under File No. 02-209200. The Office assigned the January 10, 2006 claim for recurrence of disability File No. 02-0653621. The record now before the Board contains evidence from both claim files. It is unclear if the Office formally doubled the two claims.

² On January 25, 2006 appellant claimed a schedule award related to the accepted lumbar sprain. There is no final decision of record regarding the schedule award claim.

needed to establish the claim.³ In an April 24, 2006 report, Dr. Owaid opined that the August 19, 1992 injury caused a herniated L5-S1 disc and T11-12 compression fracture. He submitted progress reports through August 13, 2006 noting continued lumbar pain with spasm and neurologic abnormalities in the left L5 dermatome.

By decision dated and finalized October 16, 2006, an Office hearing representative affirmed the April 5, 2006 decision, finding that appellant submitted insufficient medical evidence to establish causal relationship. The Office further found that the medical evidence did not establish that the accepted lumbar sprain caused a herniated lumbar disc or neurologic condition.

In an April 13, 2007 letter, appellant requested reconsideration.⁴ In a February 7, 2007 report, Dr. Magdy Elamir, an attending neurologist, noted a history of the 1992 injury, a 1998 “reinjury of his back” and the claimed November 2, 2005 recurrence of disability. He noted that a December 9, 2005 MRI scan showed an L5-S1 disc herniation and that EMG and NCV studies showed a left-sided L5-S1 radiculopathy. On examination Dr. Elamir noted paravertebral tenderness and markedly restricted lumbar motion. He diagnosed lumbar myofascitis, left L5-S1 radiculopathy, L5-S1 and T11-12 disc herniations, bulging discs at L3-4 and L4-5 and an “[a]ggravation of a preexisting lumbar spine injury of August 19, 1992.” Dr. Elamir found appellant totally and permanently disabled for work.

In a February 20, 2007 report, Dr. Owaid noted that appellant’s back pain improved with physical therapy. He diagnosed a chronic lumbosacral sprain with radiculopathy. Dr. Owaid submitted February and March 2007 physical therapy prescriptions. Dr. Thomas Helbig, an attending orthopedic surgeon, prescribed physical therapy on February 15, 2007.

A February 20, 2007 MRI scan showed a bulging L4-5 disc, disc degeneration at T11-12 and L5-S1 and a left paracentral disc herniation at L5-S1.

By decision dated June 6, 2007, the Office denied modification on the grounds that the evidence submitted was insufficient. It found that the medical evidence did not establish that the accepted August 19, 1992 injury caused the disc bulges and other diagnosed conditions.

LEGAL PRECEDENT

The Office’s implementing regulations define a recurrence of disability as “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”⁵ When an appellant claims a

³ In an undated letter received by the Office on April 19, 2006, the employing establishment indicated that appellant did not return to full duty prior to the claimed recurrence of disability. However, on the January 10, 2006 claim form, the employing establishment indicated that appellant was working full duty as of November 2, 2005. Also, appellant asserted in his claim form that he was on full duty on November 2, 2005.

⁴ Appellant also submitted medical evidence related to a neurologic eye condition.

⁵ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician, who on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's conclusion.⁶ An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.⁷

ANALYSIS

The Office accepted that appellant sustained a lumbar sprain resulting from an August 19, 1992 incident. Appellant returned to full duty. In his January 10, 2006 claim for recurrence of disability, he alleged that the August 19, 1992 injury caused total disability for work commencing November 2, 2005. Appellant has the burden of providing sufficient evidence, including rationalized medical evidence, to establish the causal relationship asserted.⁸

Dr. Owaid, an attending Board-certified physiatrist, opined in December 1, 2005 and April 24, 2006 reports that the August 19, 1992 injury caused a herniated nucleus pulposus at L5-S1, possible T11-12 compression fracture and left-sided L5 radiculopathy. He opined that appellant sustained a recurrence of the August 19, 1992 injury. However, Dr. Owaid did not provide medical rationale explaining how the August 19, 1992 lumbar sprain would cause those conditions. The Board notes that contemporaneous x-rays were reported as negative. Although Dr. Owaid stated that appellant may have sustained a vertebral fracture on August 19, 1992, he did not explain why this fracture was not visible on x-rays obtained that day. The lack of rationale diminishes the probative value of Dr. Owaid's opinion.⁹

In a March 2, 2006 form report, Dr. Owaid checked a box "yes" indicating that the August 19, 1992 injury caused the claimed recurrence of disability. The Board has held that merely checking "yes" on a form report, in the absence of medical rationale, is insufficient to establish causal relationship.¹⁰ Dr. Owaid also attributed the recurrence of disability to prolonged sitting at work and to a chronic lumbosacral sprain. The equivocal nature of the opinion on causation diminishes the probative value of Dr. Owaid's report.¹¹

Dr. Elamir, an attending neurologist, diagnosed lumbar myofascitis, lumbar radiculopathy and herniated discs. However, he did not explain how the accepted lumbar sprain caused those conditions. Dr. Elamir also diagnosed an aggravation of the August 19, 1992

⁶ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁷ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁸ *Ricky S. Storms*, *supra* note 6.

⁹ *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁰ *D.D.*, 57 ECAB 734 (2006).

¹¹ *M.W.*, 57 ECAB 710 (2006).

injury, but did not specify the mechanism of aggravation or a date of onset. Also, he did not discuss any effect of the 1998 back injury on appellant's condition on and after November 2, 2005. The lack of medical rationale greatly diminishes the probative value of Dr. Elamir's opinion.¹²

Appellant was advised by February 22, 2006 letter and at the August 16, 2006 hearing of the evidence needed to establish his claim for recurrence of disability, including rationalized medical evidence from his attending physician supporting a causal relationship between the accepted August 19, 1992 lumbar sprain and his condition on and after November 2, 2005. As he did not submit such evidence, he failed to meet his burden of proof.¹³

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability commencing November 2, 2005 causally related to an accepted August 19, 1992 lumbar sprain.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 6, 2007 is affirmed.

Issued: October 15, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹² *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹³ *Beverly A. Spencer*, 55 ECAB 501 (2004).